

SHER TREMONTE LLP

November 29, 2023

BY ECF

Hon. Taryn A. Merkl
United States Magistrate Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

**Re: *Cuomo v. Office of the N.Y. State Attorney General*, 22-mc-3044 (LDH)
(TAM)**

Dear Judge Merkl:

We write concerning the November 17, 2023 privilege log submitted by the OAG. In that log, the OAG anonymizes ten New York State Police (“NYSP”) witnesses. The purported basis for such anonymity, which appears to have been applied to witnesses the OAG believes Governor Cuomo has not yet identified, is that the “identity of cooperating witness[es] constitutes confidential privileged information.” There is no merit to such a contention. As Your Honor knows, “cooperating witness” is a term of art in law enforcement. So far as we are aware, none of the NYSP witnesses who were interviewed by the OAG were “cooperators,” nor would there be any basis to shield the identities of some NYSP witnesses but not others. Moreover, the identity of witnesses is not privileged information.

We are also concerned that, although the Court directed the OAG to file its privilege log, the OAG did not do so. Instead, the OAG submitted it directly to Chambers and filed only the cover letter.

We therefore respectfully request that the Court direct the OAG to (i) identify the witnesses on lines 19 through 28 of the privilege log, and (ii) file the revised privilege log on the public docket.

In addition, we renew our argument that the as-redacted versions of the OAG interview memos are not covered by any applicable privilege. Moreover, based on the numerous examples of redacted interview memos we have already seen, some of which we provided to the Court previously, we do not believe the as-redacted interview memos contain any mental impressions or other conceivable attorney work product. Instead, they reflect pure witness statements and should be produced.

Respectfully submitted,

/s/ Theresa Trzaskoma

Theresa Trzaskoma